

Keys to Expedient OMR Reclamation Plan Review

The Department of Conservation's Office of Mine Reclamation (OMR) recently issued a letter to lead agencies charged with administering the Surface Mining and Reclamation Act of 1975 (SMARA), instructing them on the process for submitting proposed reclamation plans for the statutorily required OMR review. A few lead agencies have posed questions about specific elements of the instruction letter. It is likely their questions reflect those of other lead agency SMARA coordinators, as well. The purpose of the following article is to answer the questions by clarifying and elaborating on the requirements of SMARA with respect to the OMR reclamation plan submittal and review process.

Public Resources Code (PRC) § 2774(c), requires SMARA lead agencies to submit reclamation plans and plan amendments, to the OMR for review prior to lead agency approval. For the process to work efficiently, the OMR must receive complete reclamation plan submittal packages for review. The following narrative addresses the types of supporting documentation to include with a submittal, and the minimum standards under law for their preparation.

According to SMARA PRC § 2772(d), any document already prepared as part of the permit application or CEQA process may be included in the reclamation plan by reference, if it is attached to the reclamation plan when submitted for review. The portions of these attachments that are referred to in the reclamation plan eventually become part of the approved plan. Further, according to PRC § 2774(c): *"When the lead agency submits a reclamation plan or plan amendments [including IMPs] to the director for review, the lead agency shall also submit to the director, for use in reviewing the reclamation plan or plan amendments, information from any related document prepared, adopted, or certified pursuant to Division 13 (commencing with § 21000 [CEQA]) and shall submit any other pertinent information."* Of most importance to OMR's expedient review is PRC § 2772(b) of SMARA, which requires that *"All documentation for the reclamation plan shall be submitted by the lead agency to the department at one time."*

Statute provides the OMR with a reclamation plan review period of 30 days. Tracking down missing documents referred to, or essential to the review of, the draft plan detracts from this limited time frame. According to the law, if all available documentation for the reclamation plan is not submitted at one time, a submittal is not complete, and the 30-day review cannot begin. In those instances, the OMR will communicate the fact of a missing document to the lead agency, and the 30-day review will be halted. Once a complete reclamation plan package is resubmitted to the OMR, the 30-day review will recommence from the start. It is therefore, in the interest of all parties that a complete reclamation plan with referenced and supporting documents be submitted to the OMR the first time.

On the other hand, deficiencies in the reclamation plan cited by OMR during its detailed review, including, for example, the need for an additional study, will be conveyed to the lead agency as part of the standard 30-day review and resultant comment letter. That is, if the OMR's review letter cites deficiencies in the reclamation plan, the lead agency's response to those comments may include a previously unprepared document or study that was not available at the time of

the initial submittal that answers the cited deficiencies. In both scenarios, the approval process may be prolonged due to missing documentation.

Types of Documents to Include for Review

Below are the documents that, if they already exist and are applicable to the reclamation plan, must be included as part of the reclamation plan review submittal:

- Draft use permit conditions of approval or use permit conditions of approval already adopted prior to the reclamation plan submittal
- Prepared CEQA documents setting forth required mitigation measures
- Slope stability studies, including supporting data and calculations prepared by a qualified professional
- Erosion and sediment control plans prepared by a qualified professional
- Groundwater/aquifer studies, including data and calculations prepared by a qualified professional
- Any prepared documentation demonstrating that surface and groundwater will be protected in accordance with the Porter-Cologne and Clean Water Acts, and Regional Water Quality Control Board requirements
- Settling ponds and spillway designs prepared by a qualified professional
- Documentation that the California Department of Fish and Wildlife (CDFW) has been consulted and any adopted or proposed requirements issued
- Recent biological surveys, including sensitive species surveys completed according to CDFW standards
- Vegetation baseline studies with cover, density, and species richness, including data and species lists
- Full-scale proposed final topography maps and scaled cross-sections prepared by a qualified professional
- Mining and reclamation phasing maps at full scale, prepared by a qualified professional
- Topsoil map with estimates of topsoil depths and amounts
- A weed management program with thresholds for active management

Depending on the site and the complexity of the mine and its reclamation requirements, some combination of these documents will be required.

Professional Standards

SMARA and its regulations set forth the technical requirements for reclamation plans, such as the designed steepness and proposed treatment of the final slopes of mined lands (PRC section 2773(a) and (b) and CCR section 3502). These requirements include aspects of mining and reclamation that entails the judgment of qualified professionals, including geologists and engineers. The OMR is subject to the SMARA regulations (California Code of Regulations, Title 14, Division 2, Chapter 8, Subchapter 1, Sections 3500 et seq.) regarding reclamation plan submittals. The OMR also relies on the State Mining and Geology Board's May 13, 2004, *Internal Policy on Validating and Accepting Professionally Prepared Reports and Other Documents Submitted for Consideration* when evaluating the need for certain components of a reclamation plan to be signed by a licensed professional. This Board policy can be found at:

<http://www.conservation.ca.gov/smgb/staffreports2004/May/Documents/0513-3a.pdf>.

In addition to the policies cited above, the Professional Engineers Act, Geologist and Geophysicist Act, and Professional Land Surveyors' Act (Business and Professions Code § 6700 – 6799, 7800 – 7887, and 8700 – 8805, respectively), require preparation of all documents describing activities, conclusions, and/or recommendations that by definition constitute professional engineering or professional geologic practice as defined by the codes cited above, to be completed by a California-licensed professional. The documents must include his or her name and license number, and bear the signature, seal of the licensee, and date affixed. When reviewing documents submitted pursuant to SMARA PRC § 2774, the OMR must have confidence that they are complete and genuine, and have been prepared by or under the supervision of licensed professionals where required by statutes or regulations.

In Summary

Incomplete document submittals result in delays in reclamation plan reviews by the OMR. Understanding the types of supporting documents that are required for reclamation plans, and ensuring that all pertinent information is included with the submittals, will speed the OMR processing of reclamation plan reviews, and ultimately lead agency processing. For further information, contact Beth Hendrickson, Manager of the OMR's Reclamation Unit, at (916)445-6175 or via email: Beth.Hendrickson@conservation.ca.gov.